THE HON'BLE MR JUSTICE D. APPA RAO

W.P.No.9979 of 2006

Dated : 23rd May 2006

Between:

P. Samarjith, S/o. Late P. Hanmath Reddy

And

The Municipal Corporation of Hyderabad

Rep. By its Commissioner, Hyderabad and others.

THE HON'BLE MR JUSTICE D. APPA RAO

W.P.No.9979 of 2006

ORDER:

The petitioner seeks a writ of mandamus for declaring the notice dated 17-5-2006 issued by the respondent No.1 under Section 636 of the Hyderabad Municipal Corporation Act, 1955(for short 'the Act'), as illegal and arbitrary.

2. With the consent of both the parties, the matter is taken up for final disposal.

3. Heard the learned counsel for the petitioner as well as the learned Standing counsel appearing for the respondents.

4. It is the case of the petitioner that respondent No.3 is the absolute owner and possessor of the premises bearing No.8-2-270 situated at Road No.3, Banjara Hills, Hyderabad, admeasuring 600 Square Feet in the ground floor of the said premises. He has taken the premises on lease for a period of three years, wherein, he has been running Car Accessories and Spare Parts shop in the name and style of Indian D'cars. On 17-5-2006, the impugned notice was issued to him alleging that the structures constructed by the 3rd respondent is unauthorized. He alleges that he was not aware that the Cellar was constructed without any permission, and that a lot of expenditure was incurred to establish the said business.

At any rate, adequate opportunity should be granted for removing the

structures without following the due process of law, the structures cannot be removed. No statutory notice was issued as contemplated under law.

5. The learned Standing counsel for the respondents 1 and 2 submits that earlier this Court in W.P.No.4471 of 2006, opined that issuing notice under Section 636 of the Act, is only in respect of the buildings, which are constructed after obtaining permission for construction of cellar, ground floor and upper floors, and the relevant provision to issue a notice is Section 452 of the Act.

6. The learned counsel for the petitioner submitted that if that were to be the case, it is for the respondents 1 and 2 to point out whether R.3 has converted the cellar into shops. If there is any deviation or conversion, it is for the respondents 1 and 2 to issue a show cause notice under Section 452 of the Act. But, without issuing any show cause notice, straight away a notice under Section 636 of the Act, was issued directing the petitioner to remove the structures, as if the constriction is made without any permission. This is bad under law

7. This Court is in the above writ petition directed the respondents therein to treat the impugned notice as show cause notice by permitting the petitioner to file a representation/explanation, within one week from the date of receipt of a copy of that order, and till such representation/explanation is considered, and appropriate orders thereon are passed. No coercive steps shall be taken by the respondent in the mean time. There cannot be any difficulty in adopting the very same procedure.

8. In the circumstances, the impugned notice dated 17-05-2006 issued by the respondent No.1 is directed to be treated as show cause notice permitting the petitioner to file a representation/explanation within ten days from the date of receipt of a copy of this order, and till such representation/explanation is considered and appropriate orders thereon are passed and communicated to the petitioner, the respondents 1 and 2 shall not remove or demolish the structures.

9. Accordingly, the writ petition is disposed of. There shall be no order as to costs.

_____

(D. APPA RAO, J)

Date: 23rd May 2006.

mrb